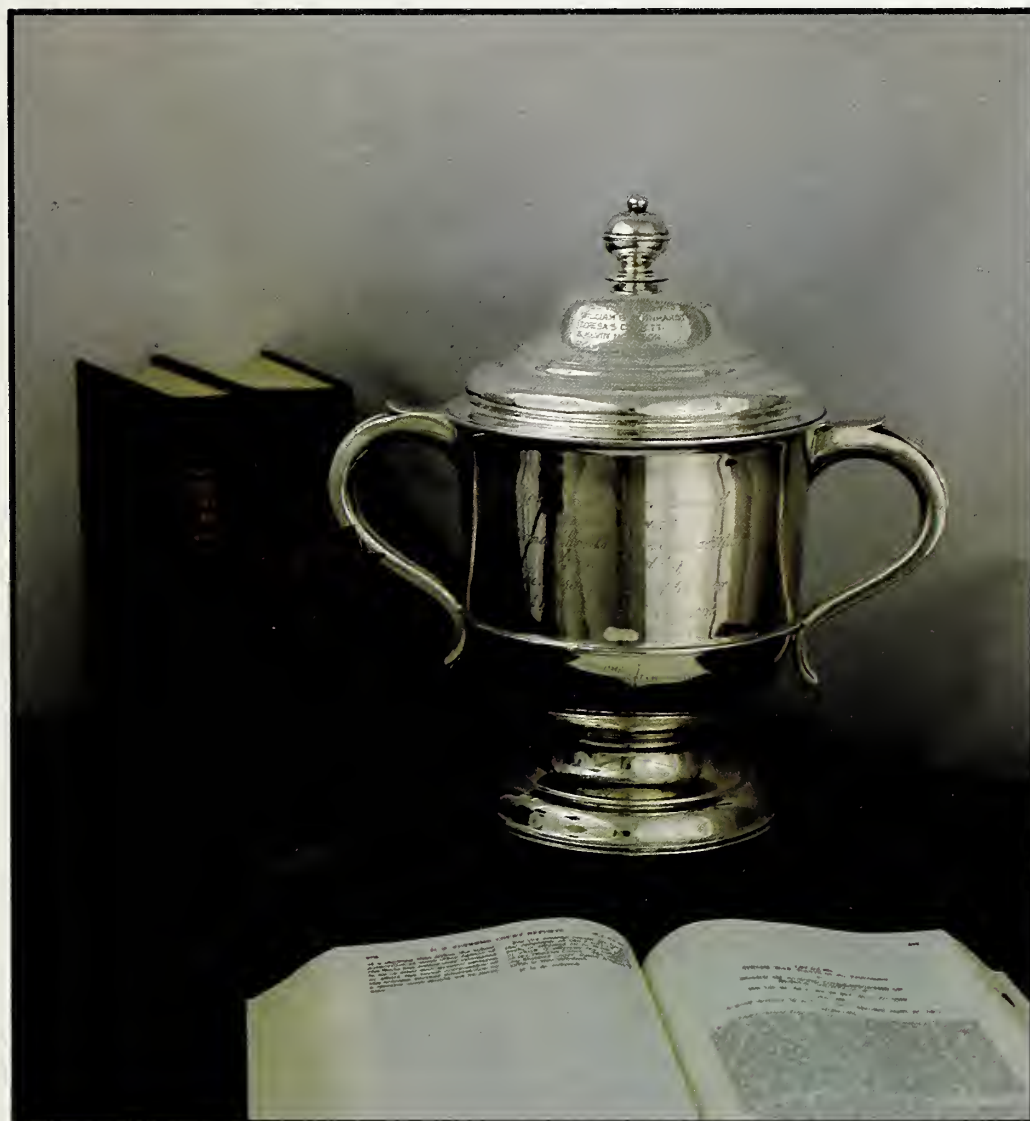


WAKE FOREST
UNIVERSITY

JURIST

Spring/Summer 1987
Volume 17 No. 2

WAKE FOREST CAPTURES CHAMPIONSHIP



*Inside: Professor Rose
Profiles the National Moot
Court Competition*

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Spring/Summer '87, Volume 17 No. 2

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The *Wake Forest Jurist* is published twice yearly by the Wake Forest School of Law of Wake Forest University. Its main purpose is to inform the friends and alumni of the Law School about activities and events of interest at the Law School, of recent important decisions by the courts of North Carolina and other jurisdictions, and news of the achievements and activities of fellow alumni. In this way the *Jurist* seeks to provide a service and a meaningful link between the School of Law and its alumni. Also, the magazine shall provide a forum for the creative talents of students, faculty and its alumni and an opportunity for legal writing by them. Opinions expressed and positions advocated herein are those of the authors and do not represent official policy of the School of Law.

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COVER PHOTO 1987 National Moot Court Championship Award (photo by William Toole)

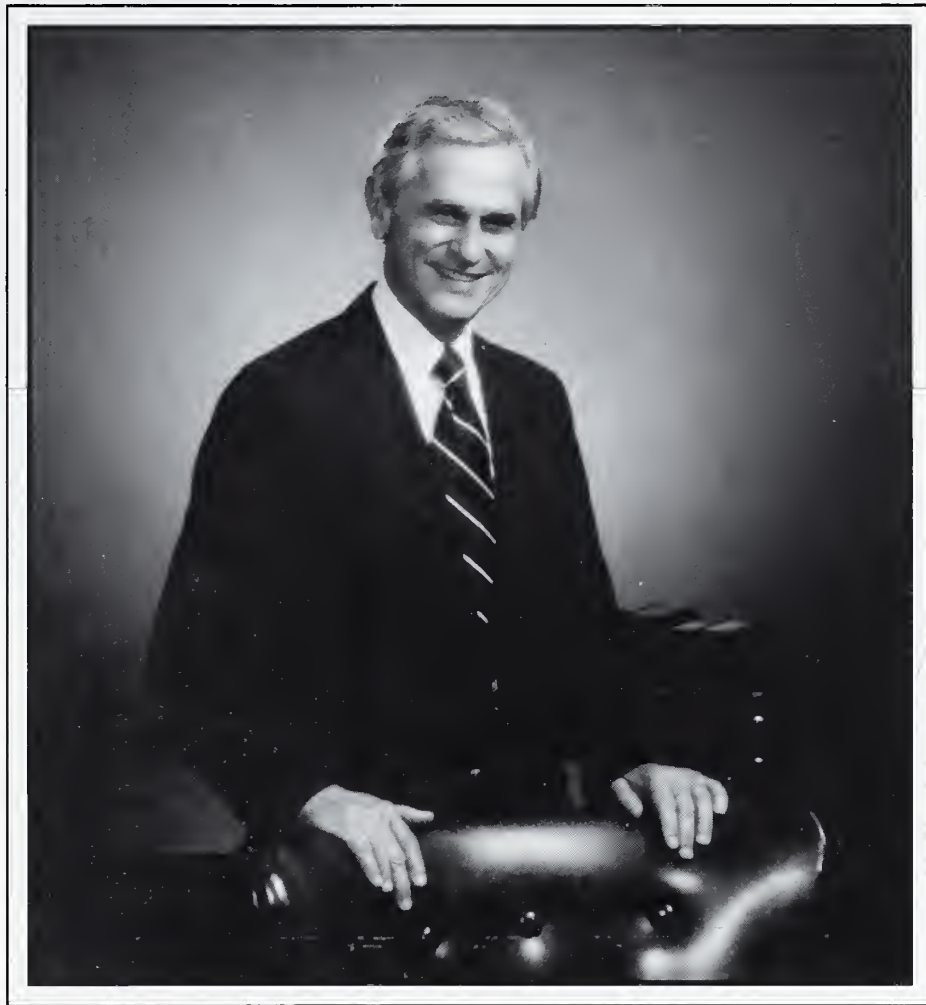
The Dean's Column

This has been one of the most exciting and satisfying years in the history of the Law School. I would like to share with you a bit of firsthand information about three of the events which have helped to make the year so special.

Winning the National Moot Court Competition championship is an outstanding achievement which many fine law schools have never experienced. In the law school world this is the same as Bob Staak taking the Deacs to the final four and winning the national basketball championship. For this year, at least, we're number one. You should realize that this heady victory did not happen accidentally. For at least the last ten years Wake Forest has had a strong and continually improving moot court program, and has come to be known as a power in the realm of moot court competition. Our record in the national competition regionals during that period is at least as good as that of any other law school in the country.

The second significant event of the year was the seven-year inspection evaluation by the American Bar Association—Association of American Law Schools for reaccreditation. On the last evaluation visit the Accreditation Committee found a number of critical areas in which we did not meet, or just barely met, minimum accreditation standards. This year's visit was different. We have not yet received the final draft of the evaluation report, but indications are that it will be very favorable in most respects. The team was impressed by the interest in, and understanding and support of the Law School by the University Administration. It was pleased with the Law School's administrative team and organization, and openly envious of the loyalty, dedication, and generosity of the law alumni. The 440 Plan, and the progress which has been made was viewed as a major accomplishment.

The very favorable report will, however, point out three major problems that remain. The most pressing of these problems is the space crunch which has now begun to seriously inhibit the health and continuing development of the Law School. ABA statistics for 1986-87 show that Wake Forest's Law School building contains about 74 net-square-feet-per-student. That places Wake Forest third from the bottom among U.S. (and Puerto Rican) law schools. The figures for the southeastern law schools with whom we directly compete are almost twice as large as ours: Vanderbilt - 193; Emory - 145; Georgia - 138; Duke - 128 (and Duke has just kicked off a capital campaign for 11 million dollars to provide additional space). The figures for other schools in the area are revealing: Washington and Lee - 244; Stetson - 226; Mercer - 159; Richmond



John D. Scarlett

- 156; William and Mary - 141; and Cumberland - 134. In North Carolina: NC Central - 293; UNC - 113; and Campbell - 110. Statistically, we are obviously hurting for space. To put a little flesh on the statistical bones, Carswell Hall was originally designed for approximately 200 students and a library of 40,000 volumes. When the 440 Plan is completed we will have 440 students and a library collection approaching 300,000 volumes. In addition to classroom and library space the building contained 15 faculty offices, one secretarial office, a dean's suite, and quarters for John, the janitor. About 125 students were enrolled when the school first opened in Winston-Salem. There was no admissions office, no placement office, no registrar, no law review, no moot court board, and except for the locker room, no student space at all. Most of the out-of-class student study and social activity took place in the law fraternity dorms, trailer court, and married students' apartments. The 1972 addition provided library and classroom space and converted two of the old classrooms into a student

lounge, a faculty library and lounge, and a few small offices. During the 1970's enrollment grew to about 500 and a second addition was opened in 1978. It was designed to provide library and office space, a few classrooms, and a larger student lounge. It actually added 15 new offices for faculty, staff, admissions, and placement, but it was crowded from the day it opened. By 1980 there were 43 full-time faculty and staff personnel in the building, and space had to be found for the Law Review, the Jurist magazine staff, and the Moot Court Board. The last ten years have seen a revolution in the methodology of legal education. The infusion of much more "hands-on" skills training and the introduction of computers on a large scale have resulted in a growing demand for additional personnel and space.

Since 1978 the Wake Forest faculty has grown from 16 to 23, and the library and support staff have grown with it. The Law School has significantly expanded its trial advocacy program, has added a clinical program and a CLE program, and has become a national leader in the use of

Law School News and Features

Lovejoy, Sisson and Williams: National Moot Court Team Extraordinaire

Any competitive event generates a certain excitement. Moot court competitions are no exception. Those competitions are especially exciting to a law school community because they measure academic law training as judged by leaders in the profession of law. In January of this year the Wake Forest National Moot Court team won the National Moot Court Competition in New York City. The event was exciting for everyone involved - the team members, the faculty advisor, the Wake Forest Law School student body, and the alumni and friends of Wake Forest. As faculty advisor to the Wake Forest National Moot Court team, my one disappointment is that the members of the Wake Forest community were not in New York to see this team compete against teams from other law schools. Had you folks who make up the Wake Forest law school community been there, I know you would have been proud. Since you couldn't be there, I want to share the pride and the excitement of the competition.

At Wake, teams are selected by the student members of the Moot Court Board. Wake Forest entered two national moot court teams in the regional competition which was held at Williamsburg, Virginia, in November. One team representing Wake Forest this year in Williamsburg included Susan Sparks of Charlotte, North Carolina; Lori Privette of Kannapolis, North Carolina; and Melanie Stevens of Pittsburgh, Pennsylvania. Wake was also represented by the team of Scott Lovejoy of Oak Park, Illinois; Donna Sisson of Fincastle, Virginia; and Karen Williams of Nazareth, Pennsylvania. Before I tell you about the success of



Wake Forest National Moot Team of Scott Lovejoy, Karen Williams, and Donna Sisson.

these teams, let me give you some background on the problem the teams briefed and argued.

The national moot court problem arrived at Wake Forest in one of the August mails. The problem was based upon the following fact situation. The government believed that members of a charitable foundation were involved in a conspiracy to defraud grant recipients. The government issued subpoenas duces tecum to the attorneys representing targets of the investigation, ordering them to bring to the grand jury hearing records of fee arrangements with their clients. In violation of a local federal district court rule, the government issued the subpoenas without prior judicial approval. One issue involved the validity of the local court rule requiring judicial approval before issuing the subpoena. A second issue involved an alleged deprivation of the targets' right to counsel by the subpoena of the fee records. Through September and October the teams researched and prepared an appellate brief which counted 40% of the score in each round of the competition.

In late November both teams competed in the regional competition at Williamsburg, Virginia. The top two teams from each region advanced to the final competition in New York in January. The team of Lovejoy, Sisson,

and Williams advanced to the regional finals where they lost to the University of Kentucky. Although Wake Forest finished second at Williamsburg, Scott Lovejoy received the award for the best oralist in the final round of the regional competition. He also received the award for best oralist overall in the regional competition. As the second place finisher in our region, the team of Lovejoy, Sisson, and Williams advanced to the final rounds in New York in January.

After a break for the Christmas holidays, the team returned to campus and began another round of practice oral arguments in preparation for New York. It was a period of refreshing one's memory on the arguments and rehonoring one's advocacy skills in making those arguments. The dedication of our friends in judging practice rounds is illustrated by the fact that on the Friday before the trip to New York, in the midst of one of Winston's paralyzing winter snowstorms, the team of Lovejoy, Sisson, and Williams was at the law school practicing one more time.

The national competition began in New York on Monday, January 26, 1987. In the initial round Wake Forest was paired with the University of Kansas Law School, a former national moot court winner. Wake Forest lost that initial round. Despite that loss the

team with its characteristic perseverance and professionalism began preparing for the next round against St. John's University on Tuesday.

In the second round Wake Forest beat St. John's, giving Wake a one victory, one loss record at the cut to the elimination rounds. Among teams with one and one records, the decision on which teams advanced turned on the scores received in the first two rounds. Based on its performance in the first two rounds, Wake Forest advanced to the elimination rounds.

In the first single elimination round on Wednesday afternoon, Wake Forest was paired with Baylor University. The oral argument competition between Wake Forest as respondent and Baylor as petitioner was spirited and I think close. The Baylor advocates were well prepared and very polished in their presentation. It was in some ways a difficult round for the Wake Forest team. I think the Wake Forest team was at its peak when responding to questions from the bench, and there were not many questions asked of either team in this round. As always, there were a number of Wake Forest supporters in the room when the judges came back to announce the winner. There was a sense of happiness in the room when the judges announced that Wake Forest would advance to the quarter-final round. In critiquing the argument the judges commented on the skill with which the Wake Forest team dealt with questions from the judges. They mentioned that the Wake Forest team listened intently to the questions, considered the questions in formulating answers, and answered the questions directly.

Following a two-hour break, Wake Forest was again to argue the side of respondent but now against Northwestern University in the quarter-final round. The level of competition in the quarter-final argument between Wake and Northwestern was extremely high. In this round Karen Williams demonstrated in my view all the skills one wants to see in an oral advocate. Her argument was virtually flawless and something wonderful to observe. Needless to say the team of Williams and Lovejoy was victorious in the round against Northwestern and advanced to the semifinals on Thursday.

At this point the excitement really began to build. The team members had

rushed to the telephone after each round to send the news to the folks in Carswell Hall. We continued to enjoy strong support from "Wake folks" - parents, alums, and friends - in New York. Having made the cut and won two arguments in New York, the Wake Forest Moot Court team of Lovejoy, Sisson, and Williams had already made history. Given the quality of the Wake Forest Moot Court program and the quality teams that had represented Wake Forest in the past, it was with real pride that this team contemplated its quarter-final win. Now it was time to face the last day of the competition.

Our semifinal opponent was Tulane University. Wake Forest represented petitioner, and the team of Sisson and Lovejoy argued. Three of the four participants in this semifinal round had argued in a semifinal round in the Craven competition last spring. The other semifinal round in New York pitted the University of Kentucky, who had beaten Wake Forest in the regional competitions in Williamsburg, against the University of Kansas, who had beaten Wake Forest in the initial round on Monday night in New York. If the Wake Forest team survived the semifinals, in the final round they would compete against a team which had beaten them on a prior occasion.

As with the other arguments in New York, the semifinal argument by the Wake Forest Moot Court team was an argument that would have made any Wake Forester very proud. Donna Sisson did a superb job in presenting the case for the validity of the rule on behalf of petitioner. Donna argued in a confident and professional manner that was a tribute to her through preparation and dedication to the development of her advocacy skills. Scott Lovejoy argued the constitutional issue with the skill and polish of an attorney some years out of law school.

In the semifinal round Scott Lovejoy made a statement about the trial judge controlling the grand jury in the problem. One of the judges immediately took issue with Scott's use of the word "control." The judge proceeded to deliver a short lesson on the importance of being precise and not overstating one's position. Mr. Lovejoy listened politely to the judge and when the judge had finished, Mr. Lovejoy said "I am sorry, your Honor, I have overstated my position. Here's what I meant to

say . . ." I believe that exchange helped Wake's position and saved immeasurable time for the rest of the argument. The same judge was interested in the extent to which our opponent overstated its position.

After the argument, the judges announced that Wake Forest would advance to the final round of the competition. In the critique of the semifinal round the panel was very complimentary to Wake Forest. The judge said that Wake Forest had responded well to questions and had made an effective presentation without overstating its position. The other semifinal argument resulted in victory for the University of Kansas, the team which had beaten Wake Forest on Monday night. Wake had two hours to prepare for the final argument.

The final round of the national moot court competition is truly an exciting event. The argument is held in a large courtroom on the second floor of the building housing the Association of the Bar of the City of New York. It is an impressive building with marble columns, oriental carpets in the reading room, and pictures and portraits of prominent members of the New York Bar displayed throughout the building. In the courtroom there was a table, several yards long, on top of which were some of the prizes awarded in the National Moot Court Competition. Among the prizes was a set of American Jurisprudence Second awarded to the best oralist in the final round of the competition. There were 56 other books awarded to various participants in the National Moot Court Competition.

In addition to the ambience of the room and the impressive prizes, one had to be impressed with the judges selected to evaluate the final round of the National Moot Court Competition. The final bench included The Honorable Byron R. White, Justice, United States Supreme Court; The Honorable Wilfred Feinberg, Chief Judge, United States Court of Appeals, Second Circuit; The Honorable John J. Gibbons, Chief Judge, United States Court of Appeals, Third Circuit; The Honorable Leonard I. Garth, Judge, United States Court of Appeals, Third Circuit; The Honorable Edward D. Re, Chief Judge, United States Court of International Trade; The Honorable Edward Weinfeld, Judge, United States District Court for the Southern District of New

York; The Honorable Charles Brietel, Former Chief Judge, New York Court of Appeals; R. Harvey Chappell, Jr., Esquire, President, American College of Trial Lawyers; and Robert M. Kaufman, Esquire, President, The Association of the Bar of the City of New York.

The followers of the Wake Forest team gathered at the building of the Bar Association of the City of New York. This time, however, they were joined in the room by perhaps 200 other spectators. In the final round Wake Forest represented respondent and the team of Karen Williams and Scott Lovejoy argued against the University of Kansas Moot Court team.

The finals began with the Kansas oralists making a smooth and impressive argument. Nevertheless, Wake Forest was more than up to the task. Karen Williams, arguing the rule issue for the respondent, delivered a superb argument. She argued in a friendly and confident manner, responded well to questions from each judge, and maintained control of the argument throughout. Arguing the constitutional issue, Scott Lovejoy was excellent. Again, demonstrating his ability to establish rapport and gain the confidence of the panel, Scott was able to inject a little humor into his argument. At one point he argued a position taken by the court of appeals in the mock case. Mr. Justice White immediately asked Scott, "Mr. Lovejoy, isn't it true that you are taking that argument beyond what the court of appeals did in this case?" To which Mr. Lovejoy responded, "Yes, your Honor." At that point Justice White looked down from the bench, "In fact, Mr. Lovejoy, you're taking it quite far beyond what the court of appeals did in this case." To which Mr. Lovejoy responded, "As far as I can take it, your Honor." The response in the form of a chuckle from Justice White and the other members of the bench made it clear that Mr. Lovejoy had engaged the entire bench and had succeeded in establishing a high degree of rapport with the bench. The court retired to make its decision on the winner of the Thirty-Seventh Annual National Moot Court Competition.

It was a great moment when, following a brief critique, Mr. Justice White announced that the winner of the

National Moot Court Competition was Wake Forest. The pride only increased as it was announced that Karen Williams was the winner of the runner-up best oralist award for her argument in the final round of the competition. Then it was announced that Scott Lovejoy had won the award as best oralist in the final round of the National Moot Court Competition.

The moot court team returned to Wake with many awards to attest their victory. The awards included:

The Russell J. Coffin Fund Award—a cash award to further the skills of advocacy and a permanent prize of a silver tray to the school winning the competition.

The John Knox Award—a silver cup for one year to the school whose team wins the competition.

The American College of Trial Lawyers Award—a silver cup in memory of John W. Davis to the school giving the best oral presentation in the final round of the competition. In addition Karen Williams received a permanent prize of a silver tray as runner-up oralist in the final round and Scott Lovejoy received a permanent prize of a silver tray as best oralist in the final round.

The Marian and Bernard Botein Award—possession of a silver tray for one year to the school of the individual who best demonstrates the art of appellate advocacy in the final argument.

In addition to the silver cups and silver trays each member of the team received several books for his or her achievement in the competition. Scott Lovejoy won a set of American Jurisprudence Second for his performance as best oralist in the final round.

After the awards were presented, the excitement continued. Members of the Wake Forest Moot Court team were approached that very evening by law firms from Texas and California wanting to interview them for law firm positions. The telephone lines to Winston-Salem and hometowns in various states were busy with the exciting news.

The excitement was not over yet. The reaction of the Wake Forest Law School community was indeed heart warming. The University recognized the team at the Founders' Day Convocation in Wait Chapel. Students through-

out the law school were generous with their sincere congratulations and a shared enthusiasm in the victory. For two days students stopped and pored over the photographs, news accounts, and programs from the final round competition in New York.

I think it's important to say a few things about the three students who brought this victory to Wake Forest. Each of the students has distinguished himself or herself during the years at Wake Forest. Scott Lovejoy has received recognition as best oral advocate in the first year competition, semi-finalist in the first year competition, member of the winning Craven Competition Team, best oralist overall in the Regional National Moot Court Competition, best oralist in the final round of the Regional National Moot Court Competition, member of the winning national moot court competition team, and best oralist in the final round of the National Moot Court Competition. Donna Sisson was a member of the winning Craven Competition Team, a member of the Wake Forest team in the finals of the Regional National Moot Court Competition, and a member of the winning team in the National Moot Court Competition. Karen Williams was a quarter-finalist in the first year competition, best oralist in the Stanley Moot Court Competition, a quarter-finalist in the ABA Regional Moot Court Competition, a finalist in the Regional National Moot Court Competition, a member of the winning team in the National Moot Court Competition, and the runner-up oralist award in the final round of the National Moot Court Competition. It has been said that an artist is one who can accomplish a difficult assignment and make it look easy. Each member of this moot court team has indeed mastered the art of advocacy.

Hopefully this chronology has given you some idea of what happened in New York and helped you share our pride in Wake Forest, in the moot court program, and especially in these three fine students who represented Wake Forest so well in the National Moot Court Competition.

—Charles P. Rose, Jr.
Professor of Law

Ralph Peeples— Teacher of the Year

“Nice guys finish last.” Leo Durocher, the famous baseball manager of the Giants, once made this profound statement. Yet here at Wake Forest, one special person and self-professed baseball fanatic defies this maxim: he is Ralph Peeples, the 1986 Wake Forest School of Law Teacher of the Year.

Peeples admits that he never really hungered for a career in law while growing up as a boy in Charleston, S.C. In fact, he claims he went to law school “for lack of anything else to do.” Even as an undergraduate at Davidson College he had little inkling of his calling. Peeples harkens back to an organic chemistry class he struggled through which told him to major in liberal arts. The teacher was Professor Jim Martin, now governor of North Carolina. However, Peeples defines any relation between that class and his decision to go into law as “tenuous.”

After Davidson, Peeples moved on to the New York University School of Law, where he received his Juris Doctor in 1976. While a student, he never envisioned that his future in the law would be as a teacher. “I never gave it a thought,” Peeples mused. “I was just one of those guys who used to sit in the back of the room.” He recalls sneaking out of his large civil procedure class with a few friends and riding the subway to Shea Stadium to catch an afternoon Mets game. “Twenty-five cents to ride the subway and \$1.25 general admission.”

After three years of private practice in Cleveland, where he became a big Indians fan (he keeps a Tribe cap on his filing cabinet in his office), Peeples came to Wake Forest and found his niche in teaching. “It’s really been great,” he said as a big smile crossed his whiskered face. “I kind of just got hooked. The first year I found I liked it and it’s worked out great!”

Peeples’ students are glad it has worked out. David Balmer, a second-



Ralph Peeples

year student from Charlotte, thinks Peeples’ influence is tremendous. “He’s very creative in how he presents the subject matter,” noted Balmer. “He generates a lot of student interest. He sparked my interest in corporate law. I thought it would be boring but now I think it’s my favorite course.”

“He does not hide the ball from you,” Balmer remarked. “He explains the law very clearly. He also makes learning fun. What would ordinarily be a very boring case, he makes fun.”

Peeples tries to approach his classes differently. While the classes he teaches—Business Organizations, Debtor-Creditor, Business Planning and Securities Regulations—all have an essentially commercial theme, he looks at each much like a batter faces different kinds of pitchers—he makes adjustments. “Classes have personalities,” Peeples reflected. “I try to adjust to each class. The best classes are the ones where we (he and the student) both learn something.”

While this is the second time Peeples has been so feted (he won for the first time in 1980), he remains humble and gracious. He took care to point out that 16 of his colleagues were nominated for the award this year. “That tells me there’s a lot of great teachers out there in the minds of our students.”

Peeples and his wife Faith make their home in Lexington. They presently have two children, ages six and two, and had twins last May. He enjoys listening to jazz and participating in a baseball rotisserie league along with

Professor I. Boyce Covington.

Peeples honestly enjoys educating students. Fortunately for Wake Forest, he has no immediate plans to return to private practice. With such a valuable player on the team, the school cannot afford to let him go the free agent route.

—Robert Ruegger

Robert Ruegger is a rising second-year student from Raleigh, N.C.

Southeastern Regional Client Counseling Competition

Lawyers are most often portrayed delivering fiery summations to packed courtrooms ala Perry Mason. What is usually missing is the *other* side of the profession—the interviewing and counseling of the client. After all, it is his interest that is at stake.

Wake Forest took the law out of the courtroom and into the office February 28 and March 1 for the Southeastern Regional Client Counseling Competition sponsored by the ABA. Undaunted by a violent snowstorm, two-person teams from Virginia, North Carolina and the District of Columbia competed while over thirty area lawyers and psychological counselors judged the rounds. The team from the T.C. Williams School of Law at the University of Richmond emerged triumphant, and advanced to the finals in Toronto on March 27.

The Wake Forest team of Jerry Robbins, Lisa Zaina and alternate Polly Sizemore made it to the semi-finals before losing to Richmond, the eventual victors. The topic of this year’s competition was juvenile law.

The conferences began when the “client” walked into the “office” and lasted for thirty minutes. Afterwards the two lawyers were allowed fifteen minutes to consult each other to analyze the client’s problem and the various

solutions. All the lawyers' movements were in front of three judges, consisting of two area lawyers and one counselor.

According to Carol Anderson, the Wake Forest team advisor, the judges "were most concerned with the information elicited, the effective rapport with the client, how the participants analyzed the client's problem and alternative solutions."

After each round the judges would critique the lawyers' performances and gave advice. "No one took it lightly. They were critiqued for a *long* time," according to Linda Michalski, Director of Public Relations. Ms. Michalski was instrumental in organizing this year's competition. Along with rounding up thirty lawyers to act as judges for a weekend, she also located effective "clients" from throughout the community. Sources included students from Mount Tabor High School, the Little Theatre of Winston-Salem and at least one personal friend. "People were *more* than willing to help us out. But the hardest problem was getting a grandmother-type for Saturday morning," Ms. Michalski commented. As part of their participation, the "clients" were given a few pages of background information pertaining to their character and their specific legal problem, but frequent ad-libbing was necessary.

Team member Jerry Robbins of New Hampshire became interested in this competition when he helped last year's team with their rounds. To become familiar with the practical aspects of juvenile law, "Polly, Lisa and I did a lot of research on our own and read many articles" during the two weeks prior to the competition. The teams knew in advance the kind of problem involved, for example, child abuse. But only the judges knew anything about the client's background.

"The emphasis isn't on law, but the ability to counsel the client on different options," Robbins continued. "This type of competition is very helpful. It makes you feel confident and able to take charge of that interview. It's great to put them (the client) at ease and make them feel better."

Team member Lisa Zaina estimated that the three participants practiced between one and two hours a day for two weeks just on the counseling aspect. In addition they spent one or two hours a day researching the legal problems anticipated. Ms. Zaina didn't mind the workload, because "this is probably the most important type of competition in law school. After all, it all starts with the client."

Since the teams only knew the very basics of each round's problem, their research had to cover whatever possible issue that might arise. This was in addition to having to learn how to counsel, something not offered in class. According to Ms. Anderson, the combination of Mr. Robbins and Ms. Zaina made "a fine team. They are very complimentary and exhibited some smooth, smooth teamwork," in addition to putting in countless hours of work.

Although counseling is "an extremely important part of developing legal practitioners, it is often slighted," Ms. Michalski added. The ABA, through the administration of this competition, hopes to promote greater knowledge in preventive law and counseling functions and to develop interviewing, planning and analytic skills in the lawyer-client relationship. But when it comes down to it, as Ms. Michalski reported, "It was role-playing—serious and fun."

—Christie Ryan

Christie Ryan is a rising 2L

BLSA Scholarship Banquet



Olexis Pearce ('83) was honored at the BLSA Banquet. (photo by Toole)

The Black Law Student Association (BLSA) sponsored the Third Annual Scholarship Banquet on February 21. The Honorable Henry E. Frye, Associate Justice, North Carolina Supreme Court, was the guest speaker.

The Association honored four black attorneys for their outstanding contributions to the field of law. Those honored were Jean Burkins, an associate with Finkel, Georgaklis, Goldberg, Sheftman & Korn of Columbia, SC; Nelson Mandella who has been incarcerated in South Africa since 1963; Alexis C. Pearce ('83), with the Public Defender Service for the District of Columbia; and Irving L. Joyner, the Assistant Dean of the North Carolina Central University School of Law.

Funds from this annual banquet go into the BLSA Scholarship Fund. The purpose is to offer scholarships to black law students.



Judges observe final rounds of the Client Counseling Competition.

Law Day Banquet

Over 350 alumni, faculty and students gathered at Bermuda Run Country Club on March 21, 1987 to attend the 35th Annual Law Day Banquet. Perry Fisher, President of the Student Bar Association, presided over the evening.

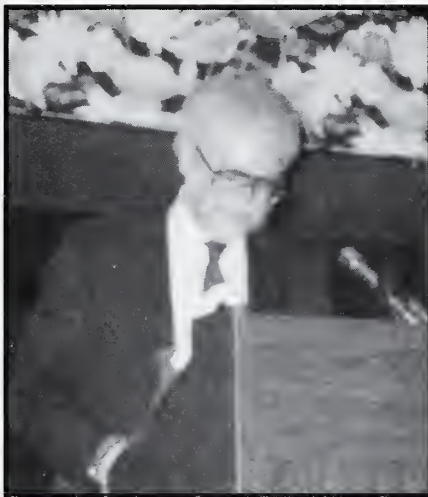
After cocktails and a buffet dinner, the Student Bar Officers-Elect were sworn in by Dean John D. Scarlett. The new officers for 1987-1988 are: Brian Dubuc, President; Linda Wohlbruck, Vice President; Karen Johannes, Secretary; and Beth Denning, Treasurer.

The *Jurist* presented its Excellence in Teaching award to Ralph A. Peeples.

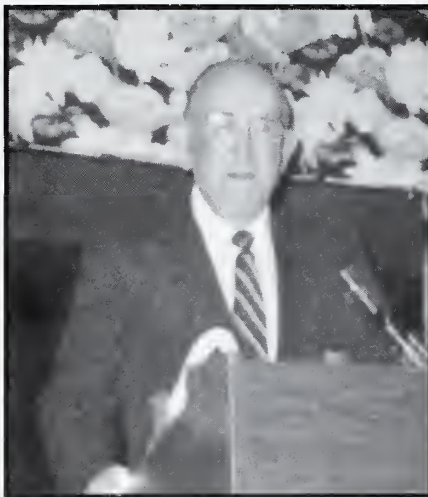
Clifton Everett, Sr. ('40) received the Alumni Award for Outstanding Service. Mr. Everett serves on the Law School Board of Visitors and lectures for CLE.

The guest speaker was John Q. Beard, the President of the North Carolina Bar Association. Mr. Beard spoke about the history of the Constitution and events leading to its ratification in North Carolina.

After the program, the Ron Rudkin Orchestra provided entertainment.



John Q. Beard, President of N.C. Bar Association. (photo by Donovan)



Clifton Everett, Distinguished Alumni Award Recipient. (photo by Donovan)



1987-88 SBA Officers are sworn in. Left to right: Karen Johannes, Linda Wohlbruck, Beth Denning, and Brian Dubuc. (photo by Donovan)

James W. Armentrout

James W. Armentrout is the newest lecturer of law at Wake Forest. He taught Real Property Securities this past spring. Mr. Armentrout came aboard last semester, and is employed with Ramey, Inc. as business and operations manager and also as general counsel. Ramey, Inc. is a public utilities contractor.

Mr. Armentrout, reared in Norfolk, Virginia, received his law degree from the University of Virginia. He came to North Carolina, where he clerked with the N.C. Court of Appeals for one year. He has been with the firm Allman, Spry, Humphreys and Armentrout in Winston-Salem for sixteen years until September 1986. Mr. Armentrout has always enjoyed his involvement with Wake Forest Law School. He has participated as a Moot Court judge in various competitions almost every year since he moved to Winston-Salem.

He notes that the student body at Wake Forest Law School continues to be of high quality. He characterizes students as generally inquisitive and hard working. His students certainly benefit from the instruction of a practicing attorney with his experience.

Mr. Armentrout has served as chairman of the Forsyth County Board of Elections for the past eight years. He has also served as the President of the Forsyth County Bar Association. Currently, he is the President-elect of the Forsyth County Mental Health Association.

He is married to Johnne, who works at the counseling office at Wake Forest University. They have three children: Kyle and Brant, twin boys aged 14, and a daughter Britt, age 12. Mr. Armentrout is enjoying this opportunity to teach, and his tenure here at Wake Forest will certainly be a benefit to all.

—Scott Wood Warren

Scott Wood Warren is a graduating 3L from Spring Hope, NC.

Student Trial Bar Hosts Annual Zeliff Competition

The 1987 Zeliff Trial Competition was won this year by Polly D. Sizemore, a rising third-year student from Greensboro, North Carolina. Not intended to be as strenuous as the Trial Practice classes, the competition promotes the development of trial advocacy skills and recognizes outstanding advocates from the second and third year classes. "Development of competent trial skills is very important because most attorneys end up in court at one time or another," says Kenny Rotenstreich, president of this years Student Trial Bar, "plus it's a lot of fun."

The judges of the competition included Judge W. Earl Britt ('50), of the US District Court of North Carolina -Eastern District; Marshall Haywood ('59), a partner in Haywood, Carson & Merryman of Charlotte; C. Banks Finger, Jr. ('50), a partner in Finger,

Parker & Auram of Winston-Salem; and Daniel W. Fouts ('58), a partner of Adams, Kleemeier, Hagan, Hannah & Fouts of Greensboro. After each round the judges would critique each participant. "I really appreciated the judges insightful and helpful comments," said Derek Crump, a semi-finalist.

This years competition involved the prosecution of a homicide. A doctor was charged with the first-degree murder of his son. The State basically argued that the doctor murdered his son because he hated him. Conversely, the defense argued that the son had a violent temper, and while under the influence of drugs attacked his father. The doctor, who was in poor health, was forced to shoot his son to avoid having a fatal heart attack.

All participants in the initial rounds had to prepare a presentation for both the State and the Defense. Participants were required to give a brief opening and closing statement and a direct and cross-examination of the witnesses. Further, each participant laid a foundation for an article of evidence and introduced it into evidence.

Polly D. Sizemore and Martin R. Johnson, of Miami Springs, Florida survived the single elimination from the round of eight to reach the finals. Ms. Sizemore represented the State



Polly Sizemore addresses the jury. (photo by Toole)

while Mr. Johnson represented the Defense. Though the trial was well fought by both sides, the poise and quick thinking of Ms. Sizemore carried the day. At the close of her cross-examination of the Defendant, Ms. Sizemore inquired, "Dr. Livingston, I know you're in poor health. These questions have been pretty stressful for you haven't they?" "Yes." "Well Dr. Livingston, you're not going to pull out your gun and shoot me are you?"

The Zeliff Trial Competition is sponsored each year in February by the Student Trial Bar and funded by the Cynthia J. Zeliff Fund. As the winner, Ms. Sizemore received a \$200 cash prize and had her name engraved on the Zeliff plaque. Further, both finalists attended a dinner with the judges at Ryan's Restaurant, followed by a reception at Graylyn.

—Dan Bryson



Marty Johnson questions the Defendant, Dr. Livingston. (photo by Toole)

By Dan Bryson, a frustrated quarter-finalist, from Greensboro, and a rising 3L.

continued from page 1

computers for research, instruction, and administration. There are now more than 60 people working full time in Carswell Hall. To shoehorn these new people and programs into the building we have re-designed and used up every available square foot of space. We have converted restrooms and janitorial closets and wide places in the hall into office space and have moved the Law Review into the old student lounge. To find space for our computer center and our placement operation we have been forced to cannibalize library space mercilessly, and at this moment are grabbing more library space for office space for two new faculty members. We have been completely out of library stack space for more than three years. We have stored several thousand volumes in the mechanical dungeon space under the building, and now have approximately 15,000 volumes shelved in the old ROTC rifle range in the gymnasium. The space problem is real. It hurts both our program and our competitive position. There is, however, light at the end of the tunnel.

The other two problems which will probably be highlighted by the evaluation report involve the library and faculty salaries. The library collection has more than doubled since 1980, and is now adequate (though just barely) to support our present program. Substantial additions to the staff and the budget will be necessary, however, to support the program designed in the 440 Plan, and library space must be tripled, at least. Following the 1980 evaluation, the University made a commitment to the Accreditation Committee to raise the Law School salary structure to a level equal

to those of the top third of law schools in the nation. That commitment has not been met, but the University administration has been making progress and both the shortfall and the progress will probably be noted in the report.

The third major event of the year was the magnificent gift of the RJR Nabisco World Headquarters building to the University. The gift presents the University with an interesting set of problems and opportunities. The long range impact on the University will be patently beneficial. This is a big part of the light at the end of the tunnel which I mentioned earlier. The three major options open to the University are to sell it, lease it, or move into it in whole or in part. Each of these options is being explored. The Law School, the Babcock School of Management, and the University architect have examined the feasibility of our use of the building. The two schools would need less than half of the space in the building. Leasing the remainder with the two schools included is being studied. Although title to the building was transferred in March, RJR Nabisco has leased it until the end of the year. Thus, the University has some breathing space to explore options and decide on the best course for the school and the community. Regardless of the eventual use of the building the space problems of the Law School and much of the University are much closer to solution. Attention then can be directed to the continuing improvement of programs, faculties, and libraries to meet the educational challenges of a quality private university.

It has been an exciting and exhilarating year, and the future looks even better.

Where the Class of '87 is Going

As of May, 1987, 66% of the graduating class reported employment. Of this number, 48% are remaining in North Carolina. Students also are headed for Florida, Michigan, Georgia, DC, Virginia, Maryland, Pennsylvania, Ohio, Texas, California, Tennessee, New Jersey, New York, Rhode Island and West Virginia. While most of the Class of '87 will be employed by law firms, several will go on to judicial clerkships, JAGC, and graduate study.



THE LAW REVIEW IS VERY PLEASED TO ANNOUNCE ITS SELECTION OF THE 1987-88 BOARD OF EDITORS

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Can Virginia Enforce Its Hazardous Waste Facilities Siting Act Against Federal Facilities?

**Ensign Hustace is presently a third-year law student at Wake Forest University. She received her B.A. degree from the University of Evansville in 1982 and her M.A. degree from Evansville University in 1984. Ensign Hustace is on the editorial staff of the Wake Forest Law Review. The author wishes to express her gratitude to Commander Charles Tucker, U.S. Navy, for his most helpful assistance, suggestions, and comments.*

I. INTRODUCTION

The disposal and treatment of hazardous waste is a problem of national concern. Hazardous waste, if disposed of improperly, can foul soil and water and injure wildlife; however, United States industries continue to expand and require additional facilities to process the hazardous waste they

generate. Tension exists between the need for industry and economic growth and the desire for a healthy environment.¹

Congress addressed the hazardous waste problem through the Resource Conservation and Recovery Act (RCRA)² of 1976, which provides uniform guidelines for the disposal and treatment of hazardous waste. These guidelines were designed to protect the environment by prescribing specific standards for the construction and operation of all hazardous waste facilities. The enactment of Federal guidelines also encouraged industrial growth by overriding the patchwork of state and local regulations.³

In part, as a result of the laxity in pollution control at some Federal facilities,⁴ Congress added a section to the RCRA which compels Federal facilities to comply with authorized state plans for hazardous waste management.⁵ This waiver of sovereign immunity has been the subject of litigation in which the courts have sought to ease the tension created by local regulation of Federal facilities.

A potentially troublesome situation now exists in Virginia as the result of this Federal/state conflict. Virginia has passed a siting act⁶ which controls the location of hazardous waste facilities at the state level. Proposed regulations would ban any hazardous waste facility along the coast of Virginia. This action comes at a time when the Department of Defense (DOD) plans to construct a large facility to accommodate the waste generated by naval bases and air

stations along the Virginia coast, for which the present facilities are rapidly becoming inadequate. The proposed regulations, if applicable to the Federal government, would not only prevent the building of such a facility, but could result in the shutdown of existing U.S. Navy waste facilities.

This comment discusses the conflict between the United States Navy and the State of Virginia.

Currently, under the RCRA, Federal facilities must comply with State substantive and procedural requirements when those requirements are part of a federally authorized hazardous waste management and disposal plan, are objective and quantifiable, and are integral to standards for emissions and



Ensign Lani A. Hustace, USNR *
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36 Naval L. Rev.—(1987)

¹The Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 (Pub. L. No. 94-580, § 2. 90 Stat. 2796 (1976) (current version at 42 U.S.C. §§ 6901-6987 (1982)).

²Pub. L. No. 94-580, § 2. 90 Stat. 2796 (1976) (current version at 42 U.S.C. §§ 6901-6987 (1982)).

³Until the passage of the Reserve Conservation and Recovery Act, hazardous waste disposal, if regulated, was directed by various local and state

requirements. See Duffy, *State Hazardous Waste Facility Siting: Easing the Process Through Local Cooperation and Preemption*, 11 B.C. Env'tl. Aff. L. Rev. 755, 789 (1984).

⁴See Tucker, *Compliance by Federal Facilities with State and Local Environmental Regulations*, 35 Naval L. Rev. 87, 88 (1986).

⁵42 U.S.C. § 6961 (1982).

⁶Va. Code §§ 10-287 — 10-304.1 (Supp. 1986).

⁷426 U.S. 167 (1976).

⁸42 U.S.C. § 6961 (1982).

⁹*Id.*

¹⁰National security is also an area of paramount interest to the United States. There are security concerns with the operation of military bases, the transportation of nuclear materials, weapons, and any other material essential to the operation of a military base, as well as the storage of these materials.

¹¹42 U.S.C. § 6926(b) (1982).

¹²42 U.S.C. § 6926(d) (1982).

related environmental factors.

II. THE SITUATION IN VIRGINIA

A. Federal Analysis

Whether the RCRA permits enforcement of Virginia's siting statute is irrelevant, if the RCRA grants an exemption from compliance with state regulations. Section 6961 of the RCRA provides that "the President may exempt any solid waste management facility of any department, agency, or instrumentality in the executive branch from compliance with such a requirement [of the state] if he determines it to be in the paramount interest of the United States to do so."⁸ The initial exemption would be for one year, however, the President may renew the exemption annually after a new determination of "paramount interest" on the part of the United States.⁹

The construction and operation of a hazardous waste facility is permanent. An exemption could neither be premised on the basis that the need is transitory nor on the element of suddenness of surprise. The only basis for an exemption would be a continuing "paramount interest" to the nation or national security.¹⁰

B. The Scope of RCRA—

Authorized State Programs

Section 6926 of the RCRA authorizes Federal approval on state hazardous waste programs. Once the Environmental Protection Agency (EPA) Administrator has received a proposed plan and approves it, the "State is authorized to carry out such program in lieu of the Federal program . . . and to issue and enforce permits for the storage, treatment, or disposal of hazardous waste . . ."¹¹ Further, "[a]ny action taken by a State under a

hazardous waste program authorized under this section shall have the same force and effect as action taken by the Administrator . . ."¹²

Virginia's Solid and Hazardous Waste Management statute¹³ which is in effect until 1986, had been approved by the EPA. Accordingly, Federal facilities were required to comply with the statute's substantive and procedural provisions.¹⁴ This statute, however, did not cover the siting of hazardous waste facilities. The law specifically provided for the "exercise [of] general supervision and control over solid and hazardous waste management activities in this Commonwealth **with the exception of siting** certification of hazardous waste facilities . . ."¹⁵

In 1986, however, Virginia enacted the Virginia Waste Management Act,¹⁶ which specifically addresses the siting of hazardous waste facilities.¹⁷ As of the writing of this comment, however, these siting criteria were not part of any federally approved program.¹⁸

The RCRA provides that a state program may impose stricter requirements than those of the EPA. Section 6929 states that "no State . . . may impose any requirements less stringent than those authorized under this title..."¹⁹ Should a state attempt to impose less stringent standards, the Federal government could enforce to more stringent Federal standards, pursuant to the Supremacy Clause of the United States Constitution.²⁰ This comment will now analyze corresponding Federal and Virginia laws with a view toward determining the applicability of Virginia's Waste Management Act to Federal facilities.

1. Federal Law

Federal regulation provides: [U]pon approval of a State permitting program . . .

(i) Except as provided in §271.4, nothing in this subpart precludes a State from:

(1) Adopting or enforcing regulations which are more stringent or more extensive than those required under this subpart;

(2) Operating a program with a greater scope of coverage than that required under this subpart. Where an approved State program has a greater scope of coverage than required by Federal law, the additional coverage is not part of the Federally approved program.²¹

Further, there are limitations concerning the "more stringent" requirements which a state may enforce. To be approved by the EPA:

[The] State program must be consistent with the Federal program and State programs applicable in other States and . . . any aspect of State law or of the State program which has no basis in human health or environment protection and which acts as a prohibition on the treatment, storage or disposal of hazardous waste in the State may be deemed inconsistent.²²

The EPA explained that, under certain circumstances, the RCRA authorized the preemption of more stringent state requirements, but that RCRA was not intended to have a "sweeping preemptive effect."²³

In an analogous situation concerning disposal sites for polychlorinated biphenyl (PCB) under the Toxic Sub-

¹³Va. Code § 32.1-177 — 32.1-186 (1950).

¹⁴See *supra* notes 9-15 and accompanying text.

¹⁵Va. Code § 32.1-178(A)(1) (1950) (emphasis added).

¹⁶Va. Code §§ 10-263 — 10-312 (Supp. 1986). This act repeals the Solid and Hazardous Waste Management statute.

¹⁷*Id.* §§ 10-287 — 10-304.1.

¹⁸Virginia had a citing statute which was enacted in 1984. Va. Code §§ 10-

186.1 — 10-186.21 (Supp. 1985).

²⁰U.S. Const. art. VI, cl. 2; Rosbe, *Transportation of Hazardous Wastes in Licensing a New Disposal Site (or not on my street)*, 17 Nat. Resources L. 509, 518 (1984).

²¹40 C.F.R. § 271.1(f)(1) (1983).

²²40 C.F.R. § 271.4 (1983).

²³Rosbe, *supra* note 35, at 521 (quoting 45 Fed. Reg. 33,385 (1980)).

²⁴15 U.S.C. § 2601 (1982).

²⁵Andreen, *supra* note 1, at 812 n.5.

²⁶*Id.* at 815.

²⁷*Id.*

²⁸Andreen, *supra* note 1, at 823 (quoting S. Jellicnk, Memorandum from Assistant Administrator for Pesticides and Toxic Substances, Environmental Protection Agency, to Regulation Administration: State and County Ordinances banning PCB disposal (Mar. 24, 1980)).

²⁹H.R. Rep. No. 1491, 94th Cong., 2d Sess. (1976), reprinted in U.S. Code Cong. & Ad. News (90 Stat.) 6238, 6240.

stances Control Act (TSCA),²⁴ which was enacted 10 days before RCRA,²⁵ one commentator notes that:

[T]he EPA has contended that Congress only meant to give state and local governments the flexibility to impose requirements more stringent than required by federal law. The agency . . . recognized that efforts to ban PCB disposal would frustrate the national program for safe PCB disposal. Thus, the EPA has argued . . . that all outright bans are void as obstacles to achieving one of the primary purposes of TSCA.²⁶

This view was also expressed on a broader scale:

While the EPA has always believed that States should have the right to set pollution control standards more restrictive than the Federal standards, it would be a matter of national concern if this principle were to become the basis for refusal by States to share in the national responsibility for finding safe means for the proper disposal of hazardous substances.²⁷

Even if a state has an environmentally sound reason for banning the disposal of hazardous waste, requirements must not be so stringent as to be infeasible.

[T]he EPA contended that Congress has intended to permit state and local governments to impose tighter restrictions if specific local geological or other physical conditions dictate variations from general, federally imposed requirements . . . [Those requirements] must be practically attainable, and they must not have been

enacted to prevent entirely the disposal of PCBs in an area.²⁸

Thus, a state may impose more stringent requirements under its hazardous waste management and disposal programs, but may not ban such facilities or unreasonably restrict their operation through unattainable requirements.

The major objectives of the RCRA are an increase in reclamation and environmentally sound hazardous waste disposal.²⁹ To allow states to ban the operation of facilities to carry out those objectives would defeat congressional intent to encourage industry growth. The amount of hazardous waste generated will not decrease as a result of a ban on waste disposal, but will be either concentrated in the few states that still allow disposal or dumped illegally by desperate and frustrated private concerns.³⁰

2. The Virginia Waste Management Act

The Virginia Waste Management Act addresses solid waste management,³¹ hazardous waste management,³² radioactive waste,³³ the siting of hazardous waste facilities,³⁴ and the transportation of hazardous materials.³⁵

With regard to the transportation of hazardous materials, it is worthy of note that the Virginia Act provides that any party which complies with Federal regulations will be considered to be in compliance with the state law.³⁶ This provision, standing alone, would potentially exempt the Navy, or any Federal entity, from compliance with the state statute so long as it were in compliance with Federal regulations, but would subject a Federal agency to state control when not in compliance with Federal regulations. This awkward and unten-

able result was avoided, however, by the inclusion of a specific exemption: "Nothing contained in this article shall apply to regular military or naval forces of the United States . . . providing the same are acting within their official capacity and in the performance of their duties . . ."³⁷ This unqualified exemption is not conditioned on compliance with Federal regulations.

The fact that the transportation of hazardous waste is entrusted not to state standards, but to **Federal** standards, detracts from Virginia's argument that its state siting standards are **necessary** to protect the health, safety, and welfare of its citizens. Virginia's allowing transportation of hazardous waste to be governed under Federal guidelines is inconsistent with its insistence that state guidelines must be followed with regard to siting. Absent the showing of a special need, such insistence appears unfounded.

The Virginia Waste Management Act, however, defines "person" to include "governmental body."³⁸ Apparently, Virginia intended the military to be subject to the statute.³⁹ Under the RCRA, the military is required to follow the substantive and procedural guidelines of a state's federally approved program.⁴⁰ As noted earlier, however, Virginia's siting statutes were apparently not included in its federally approved Waste Management Program. A more detailed analysis follows.

III. SITING: A MATTER OF FEDERAL OR STATE LAW?

State and local concerns are important, but they must be balanced against the needs of the Federal government which serves the nation. If an individual state can control Federal

³⁰Congress found "the problems of waste disposal . . . have become a matter national in scope and in concern and necessitate Federal action . . ." 42 U.S.C. § 6901(a)(4) (1982).

³¹Va. Code §§ 10-271 — 10-276 (Supp. 1986).

³²*Id.* §§ 10-279 — 10-282.

³³*Id.* §§ 10-283 — 10-285.

³⁴*Id.* §§ 10-287 — 10-304.1.

³⁵*Id.* §§ 10-305 — 10-309.

³⁶*Id.* § 10-309.

³⁷*Id.* § 10-308.

³⁸*Id.* § 10-264.

³⁹The Department of Defense is composed of the various military branches and its function is not to regulate, but to organize and maintain the defense of the nation. The Department of Defense does not routinely engage in domestic affairs, and is independent of domestic agencies.

⁴⁰It appears that the siting criteria were not specifically approved by the EPA.

⁴¹*Hancock v. Train*, 426 U.S. 167,

180 (1976); *E.P.A. v. California ex rel. State Water Resources Control Bd.*, 426 U.S. 200, 211 (1976).

⁴²U.S.C. § 6961 (1982) (emphasis added).

⁴³42 U.S.C. § 6924 (1982) (emphasis added).

⁴⁴Virginia Hazardous Waste Facility Siting Regulations §§ 2.2(A), 2.3(A) & (B), 2.4(5)(b) (proposed regulations to amend Va. Code §§ 10-312 (Supp. 1986).

⁴⁵Va. Code §§ 10292 & 10-301 (Supp. 1986).

facilities through its police power, the United States government will be confronted by a variety of inconsistent and unmanageable regulations. National concerns must often override local and state concerns when a matter of national importance is involved.

Finally, even if one is to accept that the siting of facilities is a matter of state law, not addressed by the RCRA, the issue of whether the Federal government has waived its sovereign immunity with respect to the siting of its facilities must be addressed. The waiver of sovereign immunity, providing for state regulation of Federal facilities, requires "clear and unambiguous" language on the part of Congress.⁴¹ Section 6961 subjects the Federal government to state requirements "respecting **control and abatement** of solid waste . . ."⁴² No mention is made of the siting of hazardous waste facilities.

The courts give a very narrow interpretation when the issue of waiver of sovereign immunity by the Federal government is raised. Congressional intent must be clear and express. Since the RCRA does not explicitly address siting and, since Section 6961, which partially waives sovereign immunity with respect to hazardous waste management controls, does not mention anything about siting, the Federal government has not waived its sovereign immunity with regard to the siting of hazardous waste facilities.

Further, although the RCRA does not explicitly address the siting of hazardous waste facilities, there is language in the statute that indicates a congressional intent that siting be under Federal control. Section 6924 addresses the minimum Federal standards to be

applied to operators of hazardous waste facilities:

. . . [T]he Administrator shall promulgate regulations establishing such performance standards, applicable to owners and operators of facilities for the treatment, storage, or disposal of hazardous waste . . . as may be necessary to protect human health and environment. Such standards shall include, but need not be limited to, requirements respecting— . . .

(4) the **location**, design, and construction of such hazardous waste treatment, disposal, or storage facilities . . .⁴³

Sections 6924 and 6925 of the RCRA provide that application for a facility permit must indicate the site at which the waste material will be disposed or processed.

IV. VIRGINIA'S PROPOSED REGULATIONS AND THEIR EFFECT ON FEDERAL FACILITIES

A. The Regulations

There have been regulations proposed in Virginia which would substantially modify existing law and effectively bar the Navy from constructing or operating a facility on the Virginia coast.⁴⁴ The effect of these regulations is that no hazardous waste may be incinerated or processed on Virginia's coast, although hazardous waste may be stored temporarily in specially constructed facilities for incineration at sea.

The purported authority for these regulations is sections 10-292 and 10-301 of The Virginia Management Act.⁷¹ Section 10-292 provides that "criteria shall be designed to prevent or minimize the location, construction or operation of a hazardous waste facility from

resulting in (i) any significant adverse impact on the environment and natural resources, and (ii) any significant adverse risks to public health, safety or welfare."⁴⁶ Section 10-310 provides that, included in certification may be "any terms and conditions . . . [deemed] necessary and appropriate to protect and prevent injury or adverse risk to health, safety, welfare, the environment and natural resources."⁴⁷

The proposed regulations are a severe application of the broader policy considerations stated in the statute, and their validity is determined by a three-step analysis.

1. Does the Statute Have Authority Under the RCRA?

Although the RCRA does not specifically mention siting,⁴⁸ it addresses the location of a hazardous waste facility as a consideration in a hazardous waste management program.⁴⁹ The RCRA is primarily concerned with hazardous waste management and pollution-emission control, not in siting. If the RCRA were deemed to have authorized Virginia's siting statute as part of Virginia's federally approved program, then Virginia could enforce substantive and procedural guidelines that are more stringent than the Federal guidelines.⁵⁰ Virginia, however, did not submit its siting statutes to the EPA for consideration when it applied for authorization of its state plan,⁵¹ and the statute does not indicate that it derives its authority from the RCRA. As it is extraneous to the federally authorized state plan, it cannot be enforced automatically against Federal facilities, in lieu of EPA guidelines.⁵²

Section 6947(c) of the RCRA, dealing

⁴⁶*Id.* § 10-292.

⁴⁷*Id.* § 10-301.

⁴⁸For an implied reference to siting, see *supra* note 64 and accompanying text.

⁴⁹See *supra* notes 64-67 and accompanying text.

⁵⁰See *supra* notes 9-15 and accompanying text.

⁵¹See *supra* note 33.

⁵²Upon approval by the EPA Administrator, a state plan can be enforced in lieu of the Federal guidelines. Until

approval, however, Federal guidelines remain in force for all facilities. 42 U.S.C. § 6926(b), (d) (1982). The Environmental Protection Agency, at the time the Resource Conservation and Recovery Act was enacted, was authorized to grant interim authorization to state plans already in effect. 42 U.S.C. § 6926(c) (1976). This provision does not affect the instant case.

⁵³42 U.S.C. § 6947(C) (1982).

⁵⁴It is the author's position, however, that the RCRA does not authorize a

state siting statute as part of a federally approved program which may be enforced against Federal facilities.

⁵⁵42 U.S.C. § 6926(b) (1982).

⁵⁶Va. Code § 10-292 (Supp. 1986) (emphasis added).

⁵⁷*Id.* (emphasis added).

⁵⁸Note, however, that at least one other state, Illinois, has a siting statute which has been upheld in the state courts. *City of Rockford v. Illinois Pollution Control Bd.*, 125 Ill. App. 3d 384, 465 N.E. 2d 996 (1984). The

with the Administrator's approval of a state plan, provides that "nothing in this subtitle shall be construed to prevent or affect any activities respecting solid waste planning or management which are carried out by State, regional, or local authorities unless such activities are inconsistent with a State plan approved by the Administrator . . ." ⁵³ Assuming that siting is a part of "planning," Section 6947(c) only authorizes Virginia to **enact** a siting statute that is not inconsistent with the federally authorized plan. The section does not say that such an auxiliary statute may be **enforced** against Federal facilities as if it were a part of the federally authorized plan. To be federally authorized, the statute must be approved by the Administrator. Until considered and approved, arguably, the statute has no more impact than any other state law, and the Federal government has not waived its sovereign immunity.

2. Is the Siting Statute Valid on its Face?

Assuming, for purposes of analysis, that the RCRA implicitly authorizes a siting statute as part of a federally approved state program, ⁵⁴ the statute must be examined to determine whether it is valid on its face. Section 6926(b) of the RCRA requires that a State program be "equivalent to the Federal program" and "consistent with federal and state programs applicable in other states." ⁵⁵

The siting statute itself is moderate in its language. It seeks to prevent a "significant adverse impact" ⁵⁶ on the environment and "significant adverse risks" ⁵⁷ to the public health, safety and welfare. This statute, in addressing significant adverse impact or risks is in keeping with the RCRA policy to foster improved hazardous waste processing without banning processing altogether. ⁵⁸

3. Is the Siting Statute Invalid as Applied?

Federal regulations state that "any aspect of State law or of the State program which has no basis in human health or environmental protection **and** which acts as a prohibition on the

treatment, storage or disposal of hazardous waste in the State may be deemed inconsistent" with the Federal program and, therefore, not approved. ⁵⁹ The language of the Federal regulations implies that a successful challenge to the state law will prove **both** that state regulations prohibit the processing of hazardous waste **and** that they have no basis in health or environmental protection.

The remaining issue is how strictly the provision "no basis" in health and environmental protection should be construed. If strictly construed, a state could give flimsy "environmental" reasons for the basis of its regulations and still be "consistent" with the Federal program. A more logical interpretation is that there must be a reasonable basis for the state's regulations. ⁶⁰ There is always a concern that a state or local government might enact legislation out of fear and prejudice, ⁶¹ and the absence of a requirement of reasonableness in that legislation would defeat the purpose of the RCRA.

The proposed Virginia siting regulations would act as a prohibition on management and disposal of hazardous waste in coastal areas. Only temporary storage under extremely narrow conditions would be allowed. ⁶² All other management and disposal activities would be prohibited. ⁶³ The state may have a justifiable environmental concern, and coastal areas may present problems that areas further inland do not. The issue, however, is whether these problems are so severe as to warrant a ban on all waste management activities, or whether they can be remedied through better planning and the construction of improved facilities. Since Congress opposed bans in general as contrary to the RCRA goals, ⁶⁴ any proposed bans must be viewed suspiciously and should be balanced against more moderate alternatives that consider both national and local concerns.

V. CONCLUSION

Virginia's hazardous waste facilities siting statute does not derive its authority from the RCRA and, in fact, the RCRA does not specifically mention

siting at all. To the extent the state siting statute is beyond the scope of the RCRA, it cannot be part of the state's federally authorized plan. Accordingly, it is unenforceable against Federal facilities. Implicit authority for a state siting statute is inadequate to support legislation which frustrates congressional intent.

Regulations which have been proposed in Virginia would effect a ban on the construction of hazardous waste facilities along the Virginia coast. The state has neither demonstrated that environmental and health concerns are placed significantly at risk by the construction of hazardous waste facilities that meet the guidelines of Virginia's federally approved hazardous waste programs, nor shown that an absolute ban, repugnant to congressional intent as expressed in the RCRA and by the EPA, is the appropriate solution.

Considering the history of local fear and prejudice surrounding hazardous waste, siting should be subject to the same restraints as hazardous waste management. Regulations that ban activity are inherently suspect. Regulations that severely restrict hazardous waste processing and reclamation are also suspect, and must be evaluated from the perspective of whether modern technology practically can attain the required standards. Regulations which ban or severely restrict hazardous waste facilities are contrary to the goals of the RCRA, as expressed by Congress and the EPA, and are neither valid nor enforceable against Federal facilities absent an established reasonable basis in health or environmental protection.

In the absence of a clear congressional mandate, Virginia's existing siting laws, which have not been incorporated into any federally approved program, are unenforceable against Federal facilities. The proposed regulations, which are clearly contrary to the needs of military installations along the Virginia coast and contrary to expressed congressional intent, are not likely to be incorporated into a federally approved program, even if enacted by Virginia.

Illinois statute also has a provision prohibiting the siting of hazardous waste on a 100-year flood plain. *See id.* ⁵⁹ 40 C.F.R. § 271.4(b) (1983) (emphasis added).

⁶⁰ This interpretation is supported by language in the Virginia siting statute which emphasizes *significant* adverse impact and risk to public health.

⁶¹ An example of the passion created by the subject of hazardous waste is embodied in a memorandum from the

St. Julien's Creek Joint City Task Force to the mayors of several Virginia cities. After stating that no one in Virginia wants the hazardous waste facility proposed by the Defense Logistics Agency, the author of the memo goes on to say how the Agency "made fools" of the Virginia citizens and concludes with "we think our wisdom, however small, should outweigh this outrageous Federal folly, however great." J. Overton, Memorandum from

Consultant, St. Julien's Creek Joint City Task Force to the Hon. James W. Holley III, Hon. J. Bennie Jennings, Jr., Hon. J. Robert Gray, Hon. Walter Cartwright (Oct. 19, 1985).

⁶² Virginia Hazardous Waste Facility Siting Regulation § 2.4(5) (proposed regulations to amend Va. Code. §§ 10-263 — 10-312 (Supp. 1986)).

⁶³ *Id.* at § 2.3.

⁶⁴ See *supra* note 1 and accompanying text.

Alumni News and Features

W. Earl Britt: A Profile

W. Earl Britt, the youngest of seven children of Dudley H. and Mae Hall Britt, presides as the Chief Judge for the Eastern District of North Carolina. Of the six sons in the family, four have been lawyers. Judge Britt was born in McDonald, North Carolina on December 7, 1927 and has lived in Fairmont, Lumberton, and presently in Raleigh. He is married to the former Judith Moore of Hurdle Mills, North Carolina, and has three children - Cliff, Mark and Beth.

Judge Britt began his education in the Roberson County Public School system. He graduated from Campbell Junior College in 1952 and attended Wake Forest University from 1952-53 and 1955-58. He graduated from Wake Forest University Law School under the Combined Degree program with a B.S. in 1956 and LLB in 1958. His LLB was converted to JD by the Board of Trustees of WFU in 1970. The judge is a past member of the Alumni Council of WFU and the Wake Forest Lawyer Alumni Association. He is presently a member of the Board of Visitors of the School of Law.

The U.S. Army claimed Judge Britt's attention November 1953 through September 1955. His tour of duty was served at Fort Jackson, South Carolina.

Judge Britt's legal career began as Research Assistant for Associate Justice Emery B. Denny of the North Carolina Supreme Court. He was engaged in the private practice of law from June 1959 until 1980 in Fairmont and Lumberton, North Carolina. An appointment by President Carter as U.S. District Judge for the Eastern District of North Carolina followed. Judge Britt became Chief Judge on October 8, 1983.

The Britt family has many ties to Wake Forest. All four brothers attended undergraduate school at Wake Forest and were members of the Phi Kappa Alpha social fraternity. Two of the

brothers, one of whom was Judge Britt, attended Wake Forest Law School. A third brother attended the University of North Carolina Law School and the fourth attended the University of South Carolina Law School. Judge Britt's son, Cliff, graduated from the undergraduate college at Wake Forest in 1982 and from the Law School in 1986. He is currently an associate at Petree, Stockton & Robinson in Winston-Salem.

Judge Britt feels that his older brothers, David and N.L., sparked his interest in the legal profession. He credits the military with firming his commitment by "convincing me that I wanted to be my own boss and control my own destiny." Judge Britt feels several things influenced his decision to go into the judiciary. Among them were the outstanding judges at both the trial and appellate level in North Carolina whom he practiced before. Also cited was his desire to be of service to society generally and the legal profession specifically.

—Sara Fielding

Sara Fielding is a third-year student from Lakeland, Florida

Class Notes

1949

Horace Kornegay, former member of the United States House of Representatives and former chairman of the Tobacco Institute has become counsel to the Greensboro firm of Adams, Kleemeier, Hagan, Hannah & Fouts.

1962

Fred S. Black is in general practice in South Boston, Virginia. He does work in personal injury, wills and estates, corporate and real estate. He has served as Chairman of the Board of Zoning Appeals for Halifax County, Virginia, since its inception in 1975 and served a four-year term on the Fifth District Bar Disciplinary Committee of the Virginia State Bar. He also served a four-year term on the Law Alumni Board, 1980-1984.

1975

LCDR Dennis Bengtson is currently an instructor at the Naval Justice School in

Newport, Rhode Island. He lives in Newport with his wife, Kathleen, and their three children.

Paul A. Stephens, Jr. has been appointed General Counsel for Nero and Associates, Inc. and Nero International Trading Co. in Portland, Oregon. Prior to accepting the general counsel position, Paul was in the Office of the Staff Judge Advocate, Headquarters, U.S. Army Forces Central Command. Paul is married to Mary Jane Michaels, and is the father of two girls, Ruth and Caroline. His current address is P.O. Box 40849, Portland Oregon 97240-0849.

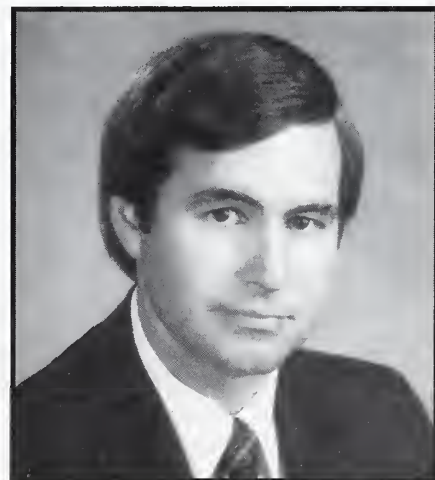


Rebecca L. Connelly

1979

Rebecca L. Connelly was promoted to Senior Vice President in Boone & Company's Winston-Salem office. She serves as general counsel for the company as well as manager of the Technical Support Division.

J. Anthony Penry has joined the Charlotte, office of Petree, Stockton & Robinson.



Lynn Burleson

1980

Lynn P. Burleson, after serving as a judge in the 21st Judicial District since December 1984, joined the firm of Petree, Stockton, and Robinson on February 1, 1987.



Donna Diprisco Tarleton

Allan R. Tarleton is engaged in insurance defense in Asheville. On May 23, 1987, he married Donna H. DiPrisco. Donna has been the Readers Services Librarian at the Wake Forest Law School Library for the past 9 years. They will reside in Fletcher, North Carolina.

1981

Peter McLean III has become a partner in the Charlotte firm of Kennedy, Covington, Lobdell & Hickman.

Carol Nash Norman has become associated with the Charlotte firm of Kennedy, Covington, Lobdell & Hickman.

1982

Gary K. Joyner has joined the Charlotte office of Petree, Stockton & Robinson.

1983

James K. Kuyk has become associated with the firm of Adams, McCullough, and Beard.

Marilyn H. Stout has joined the Winston-Salem office of Petree, Stockton & Robinson.

Steven P. Youce has joined the firm of Mount, White, Hutson and Carden, in Durham.

1984

Stephen R. Berlin has joined the firm of Petree, Stockton & Robinson.

James P. Cain has joined the firm of Petree, Stockton & Robinson.

Robert A. J. Lang has joined the Winston-Salem firm of Alexander, Wright, Parrish, Tash & Newton.

Mark Christian Orndorff, formerly an Assistant Commonwealth's Attorney for the City of Roanoke, has opened his own office for general practice of law. His office is located at 103 W. Campbell Avenue, Roanoke, Virginia.

Philip J. Passanante was named coordinator of Secaucus VITA, an IRS service

which provides free tax assistance to those who cannot afford professional tax help. He is currently practicing with Waters, McPherson, McNeill, a firm specializing in real estate and commercial matters. He resides in Secaucus, New Jersey.

1985

J. Dennis Bailey has become associated with the Winston-Salem firm of Allman, Spry, Humphreys, Leggett & Howington.

Tad W. Lowdermilk is engaged in the practice of Medical Law in Winston-Salem.

Claudia Fort Manning has become associated with the Charlotte firm of Kennedy, Covington, Lobdell & Hickman.

1986

M. Joseph Allman has become an associate in the Winston-Salem firm of Allman, Spry, Humphreys, Leggett & Howington.

Clifford T. Britt has joined the firm of Petree, Stockton & Robinson.

Robert H. Griffen has become associated with the Raleigh firm of Spears, Barnes, Baker, Hoof & Wainio.

Susan Harman-Scott and husband Robert L. Scott, Jr. had a baby girl, Hillary Claire Harman-Scott on December 20, 1986.

Graham Hudson Kidner joined the Durham firm of Mount, White, Hutson & Carden.

WHAT'S NEW

Wake Forest Jurist would like to hear from all alumni about any new developments in your life. Kindly take a few moments to fill out the form below and return it to *Wake Forest Jurist*, Wake Forest University School of Law, P.O. Box 7206, Winston-Salem, N.C. 27109

Thank you for the tremendous response to our fall letter. We would appreciate your keeping us informed by using the form below, which will appear in each issue of the *Jurist*.

Name: _____ Year of Law School Graduation: _____

Business Address: ☐ (check if new address) _____

Home Address: ☐ (check if new address) _____

Brief description of law practice or business: _____

Public offices, professional, and civic honors with dates: _____

Personal items of current interest: (i.e. marriage, birth of child) _____

1987 Graduates

Michael Steven Adkins
 Greg Charles Ahlum
 Terry M. Albright
 Thomas Dean Amos
 Kevin Scott Bartlett
 Michael Stanley Batts
 Theresa Marie Bender
 Donald S. Bennett
 Jan Yarborough Bostic
 Andrew Thomas Botschner
 Barbara Edwards Brady
 William Winston Briggs
 Maynard Moore Brown
 Marguerite H. Cameron
 Marye V. Campbell
 Richard Thomas Cardinale
 Denise Lynn Carroll
 Pattie Sue Cartwright
 Kimberly Freshwater Cathers
 Lee M. Cecil
 Raymond Angelo Ceresa
 Stephen J. Chovanec
 Laura Brigid Cimino
 Eileen G. Coffey
 Sallie Dunlap Colaco
 Richard James Colella
 Stacey Diane Cowley
 Robert Patterson Cross IV
 Richard Leo Crouse
 Gregory Stephen Curka
 Julia Ann Davison
 Elaine Alison Dawkins
 Mark Timothy Delk
 Jeffrey Anthony De Matthew
 Lisa Andrew Dubs
 James John Duplessie
 Carol Joanne Eddy
 Anthony L. Ehler
 Sara Vermelle Fielding
 William Perry Fisher II
 John Walter Fletcher III
 Andre Katrett Flowers
 John Rankin Fonda
 Steven Brian Fox
 Jeffrey L. Furr
 Edward Russell Gaines III
 Shelly A. Goering
 Michael Patrick Going
 Ellen Bailey Gordon
 John Ayres Greenlee
 Thomas Barclay Haller Jr.
 Sean Thomas Hanna
 Mark Hamilton Harris
 Ronald Lee Hicks Jr.
 Randolph James Hill
 Leslie Padgett Hitchings
 David Kent Holley
 Elizabeth Horton
 Joseph Gerard Howard
 Palmer Eugene Huffstetler Jr.
 Michael Shaw Hunter
 Lani Ann Hustace
 Debra Gibson Jarrell
 William Andrew Jennings
 Martin Ray Johnson

Delbarton, WV
 Lititz, PA
 Martinsville, VA
 Greensboro, NC
 Potomac, MD
 Rocky Mount, NC
 Altamonte Springs, FL
 Johnstown, PA
 Lexington, NC
 North Canton, OH
 Elkin, NC
 Flora, IN
 Wilmington, NC
 Morehead City, NC
 Mount Airy, NC
 Attleboro, MA
 Roseland, NJ
 Chesapeake, VA
 Mount Airy, NC
 High Point, NC
 Great Falls, VA
 Battle Creek, MI
 North Tarrytown, NY
 Attleboro, MA
 High Point, NC
 Lorain, OH
 Elkton, MD
 Flossmoor, IL
 Winston-Salem, NC
 Chatham Township, NJ
 Farwell, MI
 Cary, NC
 Brevard, NC
 Racine, WI
 Hickory, NC
 Bethesda, MD
 Denver, CO
 Sidney, OH
 Lakeland, FL
 Hendersonville, NC
 Laurinburg, NC
 Wadesboro, NC
 Durham, NC
 Saginaw, MI
 Charleston, WV
 Ludington, MI
 Berea, OH
 Reston, VA
 Memphis, TN
 Little Rock, AR
 Pulaski, VA
 Webster, NY
 Grass Lake, MI
 Beaver Falls, PA
 Bath, NY
 Toms River, NJ
 Greenville, NC
 Mount Airy, NC
 Chicago, IL
 Cherryville, NC
 Charlotte, NC
 Evansville, IN
 Winston-Salem, NC
 Wilkesboro, NC
 Goodrich, MI



Howard C. Jones II
 George Douglas Kimberly Jr.
 Emil William Kratt
 Susan Wilson Kuhn
 Warren Richard Lackey
 Richard Quintin Lafferty
 Brian David Lake
 Peter Edward Lane
 David Paul Larsen
 Laurie Faith Lassiter
 Karen Jordan Lea
 Alan C. Lee
 Leon Harvey Lee Jr.
 Darwin Littlejohn
 Scott Charles Lovejoy
 John Thomas MacFarlane
 Charles David Mast
 Kelly Ann Mathews
 Gregory Kirk Matthews
 Karla Dawn Mattox
 Mary Christine McCormac
 John Foster McCune
 Gregg Evan McDougal
 John David Middlebrook
 Lonzo Oliver Milam
 Teresa Lynn Murphy
 Ann Mason Neill
 Martha Ann New
 Deborah Kelley Newell
 Dennis Russell Nicewander Jr.
 Erik Howard Nyce
 Charles Howard Nye
 John Francis Oates Jr.
 Thomas LaFontaine Odom Jr.
 Cindy Grieves Oliver
 John Milton Oliver
 Julie Ann Ontko
 David J. Oskam
 Michael Joseph Parker
 Stacy Patricia Parsons
 Kermit Clay Pendleton
 Branson Andrew Pethel
 Mary Susan Phillips
 Charles Wilton Poole
 Lori Elizabeth Privette
 John F. Pyle
 Suzayne Reeves*
 Wilson Porter Rhoton III
 Gerald Kevin Robbins
 Susanne Marie Robicsek
 Kevin Douglas Rodgers
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 Kenneth Bruce Rotenstreich
 David Scott Russotto
 Lawrence Joseph Rybka
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 High Point, NC
 Concord, NC
 Lake Hopatcong, NJ
 Rutherfordton, NC
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 Greenville, SC
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 Young Harris, GA
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 Jordan Breault Shields
 Michael William Sigler
 Krista Lane Silar
 Paul Andrew Simpson
 Lisa Renee Singer
 Donna Drew Sisson
 Susan Grace Sparks
 Melanie Lee Stevens
 Scott Alan Stichter
 Emily Williams Streett
 Steven John Talcott
 Peter Alan Tannenbaum
 Jeffrey Allen Taylor
 Catherine Elizabeth Thompson
 Susan Elaine Thrower
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 Walter Glenn Viers
 Charles James Vinicombe
 Charles John Vucci
 Richard Wayne Wall
 Nathaniel Curtis Ward
 William Wray Ward III
 Scott Wood Warren
 James Thomas Waters
 Donald George Wenzel Jr.
 Douglas Howard Wiegierink
 Karen S. Williams
 William John Wolf
 Alison Elizabeth Wright
 Frank Burkhead Wyatt II
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 North Plainfield, NJ
 North Providence, RI
 West Palm Beach, FL
 Philadelphia, PA
 Greensboro, NC
 Spring Hope, NC
 Statesville, NC
 Chagrin Falls, OH
 Grand Rapids, MI
 Nazareth, PA
 Saginaw, MI
 Akron, OH
 High Point, NC
 Greensboro, NC



Barbara Lynn Young
 Terri Lynn Young
 Lisa Marie Zaina

Winston-Salem, NC
 Winston-Salem, NC
 Alliance, OH

Conferred December 16, 1986

Kraig E. Culbertson
 Christine L. Harrigan
 Maureen Tierney Orbock
 Lee Spencer Rosen

Sugarcreek, OH
 Woodbridge, CT
 Winston-Salem, NC
 Miami, FL



ALUMNI SURVEY

Please help us by completing the following survey. The **Jurist** will use this information for articles in the next few issues. Thank you for your time and support. Mail to:

Beth Weller
Alumni News and Features Editor
Wake Forest University School of Law, P.O. Box 7206
Winston-Salem, NC 27109

PART I. (To be filled out by alumni who graduated prior to 1983)

1. What year did you graduate from Wake Forest School of Law? _____
2. What is your current position? _____
3. Have you hired or do you work with a Wake Forest:
student as a summer associate? _____ yes _____ no
graduate as an associate? _____ yes _____ no
(if you answered "no" to both, please go to question number 8)
4. If you answered "yes" above, how would you rate the students performance?
(If you have worked with more than one student, please give an overall rating)
_____ excellent _____ good _____ adequate _____ poor
Comments: _____

5. What aspect of the student's Wake Forest education is a strength for the current job? _____

6. Judging by this work, what aspect of legal education needs to be improved? _____

7. If you have hired more than one student from Wake Forest Law School, does their work reflect any trends or changes in the quality of education? Please explain. _____

8. Have you ever failed to hire a Wake Forest student or graduate because of a deficiency in the School's legal education? Please explain. _____

PART II. (To be filled out by alumni from the Classes of 1983 to 1986)

1. What is your current position? _____
2. What aspects of Wake Forest education have been most helpful in your current job? _____

3. What aspects of your legal education could have been more useful to you? How? _____

4. Has Wake Forest made any changes in its curriculum since you graduated which have resolved these problems? What? _____

PART III.

1. Do you regularly read the **Jurist**? _____ yes _____ no
2. Which articles do you read most often?
_____ School News and Features _____ Legal Articles
_____ Features on Alumni _____ Dean's Column
_____ Articles on Faculty Members _____ Class Notes
3. Which sections of the **Jurist** would you like to see expanded? _____

4. What topics would you like to see covered in the **Jurist** that have not been covered or updated recently? _____

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